

MINUTES OF A PUBLIC HEARING HELD BY THE MAYOR AND COUNCIL  
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,  
MONDAY, NOVEMBER 18, 1985 7:30 P.M.

Mayor Joseph L. Nassif called the meeting to order. Council Members present were:

David Godschalk  
Jonathan Howes  
Beverly Kawalec  
Nancy Preston  
R. D. Smith  
Bill Thorpe

Council Member David Pasquini was absent, excused. Also present were Town Manager David R. Taylor, Assistant Town Manager Sonna Loewenthal, and Attorney Ralph Karpinos.

Mayor Nassif stated that Council Members-Elect Andresen and Werner were present and would be able to ask questions of the staff and applicants as they would be in office when action was taken on these items.

Public Hearing on Baucom Rezoning Application

Roger Waldon, Planning Director, gave a presentation on the application for Zoning Atlas amendment. He said the applicant desired to rezone the property from R-4 to Neighborhood Commercial (NC). He described the site as 1.1 acres of land, zoned R-4, and located on the east side of Airport Road opposite its intersection with Critz Drive. Mr. Waldon stated that the Development Ordinance set forth specific reasons for justifying amending the Zoning Atlas: to correct a manifest error; to respond to changed or changing conditions in the particular area; and to achieve the purpose of the Comprehensive Plan. He said the staff felt the application did not meet any of these requirements to justify amending the Zoning Atlas.

Mr. Robert Page, attorney representing the applicant, said the property under consideration was presently being used as the applicant's residence and the applicant desired to move his landscape business to this location. He said the property across the street was zoned Neighborhood-Commercial while the property to the south was a high density apartment/condominium development. Mr. Page said the proposed amendment corrects a manifest error in the Zoning Atlas and was in response to the changing conditions in that the area had been changing rapidly especially with the widening of Airport Road and the development of Interstate-40. He cited the development of the condominium/apartment complexes, convenience stores and gasoline stations as examples. Mr. Page further stated he felt this proposed change would not adversely affect the neighborhood.

Mr. Robert Baucom, speaking as the applicant, stated that he had surveyed the neighborhood for their input prior to initiating his proposal for rezoning and had found that there was little opposition to his proposal. He introduced into the record petitions signed by neighbors in which they stated they had no objection to the rezoning request and desired to have Mr. Baucom move his landscape retail outlet to this site.

Mayor Nassif asked that Mr. Waldon state for the record what the site could be used for if the rezoning application was granted. He wanted the citizens to understand that the rezoning request was not for a specific use like the landscape business but rather for a variety of uses. Mr. Waldon cited several of the varied uses from residential homes to automotive repair shops to convenience stores to landscape outlets as potential uses for the site if rezoned.

Mr. Julian Raney, representing the Planning Board, stated the Board had voted 5-3 against the rezoning request feeling it did not meet the justifications for amendment.

Manager Taylor said his preliminary recommendation was that Council deny the request.

Ms. Betty Riggsbee, speaking as a resident, spoke in support of the rezoning application.

Ms. June Brown, speaking as a resident, spoke in favor of the rezoning request.

Ms. Mary Alexander, speaking as a resident, spoke in support of the proposal.

Council Member Godschalk asked the staff if they were aware of recent legislation regarding conditional zoning that would allow the Council to rezone for a particular use. Attorney Karpinos replied that he was aware of recent legislation relating to conditional zoning but for the Town to move in this direction would require major changes in the Development Ordinance.

Mayor Nassif suggested that the conditional zoning could be accomplished with a Special Use Permit and Text Amendments instead of actual rezoning amendments.

Council Member Kawalec asked if the Baucom's landscape business was now operating as a nonconformity in an R-4 zone. Mr. Waldon replied that this was true.

Council Member Howes stated that this application pointed out the need for review and possible changes in the Zoning Atlas. He suggested the Attorney look into the affect the recent legislation would and could have on the Town's Development and Zoning Ordinances.

Council Member Preston asked if the applicant would qualify for home occupation business. Mr. Waldon replied that the staff and the applicant had reviewed this possibility and found that it would not be possible. He said that the Development Ordinance stated that the use of the dwelling unit and accessory buildings for home occupation should be clearly incidental and subordinate to the use of the property for residential purposes, and that not more than 35% of the floor area could be used for the "occupation".

Council Member Preston then asked if there were any conditions regarding the lot as a whole. Mr. Waldon replied that the Ordinance stated that the home occupation should not generate traffic volumes or parking area needs greater than what would normally be expected in a residence.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER PRESTON TO REFER TO THE MANAGER AND ATTORNEY. THE MOTION PASSED UNANIMOUSLY, (7-0).

#### Public Hearing on Brenner Rezoning Application

Roger Waldon, Planning Director, gave a presentation on the application for rezoning. He said the site was approximately 1.5 acres, located on the northwest corner of the intersection of East Franklin and Elizabeth Streets. He said the applicant requested that the property be rezoned Neighborhood Commercial (NC) from Residential-2 (R-2). Mr. Waldon stated that the staff found no manifest error in the Zoning Atlas, nor that there were changed or changing conditions. He said the Comprehensive Plan designated the site as Institutional primarily because of the use of the building (Masonic Lodge) which occupied the site, and that this Institutional designation was not the same as the zoning designation of Office /Institutional (OI) or Neighborhood Commercial. Mr. Waldon concluded by saying the staff felt rezoning the site NC would be contrary to the Comprehensive Plan's policy of prohibiting strip commercial development and encouraging concentration of commercial development in centers.

Mr. Robert Page, attorney representing the applicant, stated that the request for rezoning to NC was made in the hope that possibly OI would be allowed. He said the applicant desired to use the site as an Office/Institutional setting. Mr. Page said the rezoning would correct a manifest error in the Zoning Atlas and one that the staff should have changed in 1981. He also indicated that the proposed change would achieve the purpose of the Comprehensive Plan.

Dr. William Brenner, speaking as one of the applicants, stated that there were changing conditions in the area and in the medical community which he felt necessitated this proposed change. He introduced a petition signed by citizens in which they state no objection to the proposed rezoning request.

Mr. Julian Raney, representing the Planning Board, stated the Board had voted 8-1 to deny the rezoning request feeling it did not meet the justifications for amendments.

Manager Taylor said his preliminary recommendation was that Council deny the application.

Ms. Murray Coke, speaking as a resident, spoke in support of the rezoning request. She introduced a petition signed by neighbors supporting the rezoning request.

Mr. George Cappel, speaking as President of the Franklin Hills Homeowners Association, spoke in support of rezoning the site to Office/Institutional but said his Association was adamantly opposed to rezoning the site to Neighborhood Commercial.

Dr. James Dingfelder, speaking as a citizen and member of the medical community, spoke in support of the rezoning, citing the need for medical office facilities in Chapel Hill.

Mr. Bill Durham, speaking as a resident, spoke in support of the proposal.

Mr. Donald Johnson, speaking as a resident and member of the Masonic Lodge, spoke in support of the proposal pointing out that rezoning the property would increase the tax base for Chapel Hill.

Mr. James Jennings, speaking as a resident and member of the Masonic Lodge, spoke in support of the proposal. He said he felt the Planning Board had voted against the application under the misunderstanding that the Comprehensive Plan designated the site as R-2 not Institutional.

Council Member Preston asked for further clarification on the discrepancy between the Institutional and R-2 designation in 1981. She wondered if the change was made in an attempt to control the Neighborhood Commercial development in that area. Mr. Waldon stated that from reading in the files it appeared that in 1977 the site was designated Institutional as a result of its use, but that he was not sure why the site was designated as Residential-2 in 1981.

Mayor Nassif asked if the Masonic Lodge would be allowed within a R-2 zone. Roger Waldon replied that it would not and the the Lodge existed due to a Special Use Permit granted in the late 1950s.

Mayor Nassif asked if it were possible to modify the existing Special Use Permit (SUP) to allow for the office building. Attorney Karpinos stated that it was possible to modify an existing SUP granted under previous ordinances as long as the modification did not increase the degree of nonconformity.

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Council Member Preston asked what would be the change in parking requirements if the site were used for a medical office building. Mr. Waldon stated that if the site were rezoned or the building used as it was or expanded there would be additional changes required for both buffers and parking.

Council Member Howes questioned whether or not the Council could consider Office/Institutional rezoning instead of the Neighborhood/Commercial without the applicant having to go through the entire process again. Attorney Karpinos stated that he was not sure but that he felt there was no linear relationship between the two zoning designations with NC being clearly less restrictive than OI, and therefore the applicant would have to go through the process again. He said the Council could initiate the procedure and thus reduce the time frame.

Council Member Godschalk said there were several options available to Council regarding this issue from denial, to modifying the SUP and conditional zoning.

Council Member Thorpe stated that rezoning was a serious matter and that the Council should set specific times to deal with these questions.

Council Member Smith stated that the alternatives suggested by Council should have been explored by the applicant and the staff prior to coming before the Council, and that the Council should just discuss what was advertised to be under consideration at the public hearing.

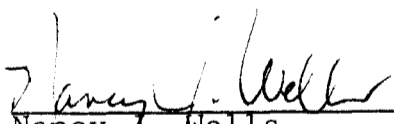
Mayor Nassif stated that the Council should set time frames for review of the Zoning Atlas to allow those changes which occurred to take effect so that the Council could see how the changes were working.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER KAWALEC TO REFER TO THE MANAGER AND ATTORNEY WITH THEIR REPORT TO INCLUDE THE APPLICABILITY OF CONDITIONAL USE ZONING, THE PROCESS FOR REQUESTING OFFICE/INSTITUTIONAL ZONING, AND THE POSSIBILITY OF MODIFYING THE EXISTING SPECIAL USE PERMIT. THE MOTION PASSED UNANIMOUSLY, (7-0).

A MOTION WAS DULY MADE AND SECONDED TO ADJOURN THE MEETING. THE MOTION PASSED UNANIMOUSLY, (7-0).

The meeting adjourned at 9:03 p.m.

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Mayor Joseph L. Nassif

  
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Nancy J. Wells  
Town Clerk